clerical employees, on the other hand, have little or no contact with either the operations, maintenance, or clerical employees assigned to those departments.

The Board sees no cogent reason in this case for departing from its usual rule to include plant clericals in, and to exclude office clerical employees from, units of operating and maintenance employees.⁷

We find, therefore, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All employees of the Employer employed in the carrying on of its business and operations in and about Louisville, Kentucky, excluding officers, executives, professional employees, the chief clerk, and the stenographer of the shop department, the schedule engineer, and the schedule maker, traffic checkers, assistant purchasing agent, cashier, chief supervisor, secretaries of the president, vice president, and general manager, transportation manager, employees in the claims and industrial relations departments, office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication in this volume.]

THE MILK AND ICE CREAM DEALERS OF THE GREATER CINCINNATI, OHIO, AREA AND CAMPBELL AND KENTON COUNTIES KENTUCKY, AND HAMILTON, OHIO 1 and MILK AND ICE CREAM DRIVERS AND DAIRY EMPLOYEES LOCAL UNION NO. 98, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, PETITIONER. Case No. 9-UA-1721. April 25, 1951

Decision and Direction of Elections

Upon a petition duly filed a hearing was held before Seymour Goldstein, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

⁷ General Petroleum Corporation, 83 NLRB 514; The Baltimore Transit Company, 59 NLRB 159; Cincinnati, Neuport and Covington Railway Company, 56 NLRB 820.

¹The following Employers are named as members of this group: The Coors Bros. Co.; The Hyde Park Dairy Company; Emmert J Marschman, a sole proprietorship d/b/a Clover Leaf Dairy; G H Berling, Inc., Joseph Hollmann and Fred Hollmann, a partnership, d/b/a Hollman Bros. Dairy. Harry S Mandery, a sole proprietorship, d/b/a John C Mandery & Sons; The Kaesenmeyer & Sons Co.; William Hinnenkamp and Joseph Hinnenkamp, a partnership, d/b/a Hinnenkamp Dairy, Feldman Dairy Company, Inc., Leo Ruther and Alfred Ruther, a partnership, d/b/a Meyer & Ruther Dairy; George Rehkamp and Joseph Kahmann, Jr., a partnership, d/b/a Kahmann & Rehkamp Company; Harry Mause, a sole proprietorship, d/b/a H. Mause Dairy; Geo T. Niehoff, a sole proprietorship, d/b/a Geo T. Niehoff Dairy; The H Meyer & Sons Dairy Co., Opekasit, Inc., The J Weber Dairy Co., Louis J. Trauth, Si. Louis J. Trauth, Jr., and Albert E. Trauth, a partnership, d/b/a Louis J. Trauth Dairy; H Miller Dairy Co., Inc., Dale

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Reynolds, and Styles].

Upon the entire record in the case, the Board finds:

- 1. The Employers are engaged in commerce within the meaning of the Act. ²
- 2. The labor organization involved claims to represent certain employees of the Employers.
 - 3. The question concerning authorization of union shop:

For a number of years the Petitioner and the Employers have negotiated collective bargaining agreements covering the employees concerned. As detailed hereinafter, negotiations have been on a multi-employer basis, followed by the execution of identical contracts by the individual Employers.

As the Employers currently recognize the Petitioner as the collective bargaining representative of their employees, we find that no question affecting commerce exists concerning the representation of employees of the Employers in the units sought by the Petitioner.

4. The appropriate unit:

In Avondale Dairy Co. et al., 92 NLRB 89 which involved 21 of the Employers herein and the same Petitioner, the Board found a multiemployer unit comprising the 47 Employers named herein to be the appropriate unit for a union-security authorization election under Section 9 (e) of the Act. All of the Employers, except one, agree to the appropriateness of including their employees in the multiemployer unit. However, one of the Employers, Beatrice Foods Company, hereinafter called Beatrice, contends that it has withdrawn from this multiemployer bargaining relationship and requests a separate unit confined to its own employees. The Petitioner takes no position, but desires an election at the Beatrice plant in the event that such a unit is found appropriate.

Grace, John Grace. Jr., James Grace and Thomas Grace. a partnership. d/b/a Willson Dairy Products; Joseph Druehe and Caroline Heile, a partnership. d/b/a Avondale Dairy Co; The J H Fielman Dairy Company, Schmiesing, Inc., The Niser Ice Cream Company, Dilg Dairy, Inc. The J. H Berling Dairy Products Co., Herman T Feldman, a sole proprietorship d/b/a Newport Dairy; Fred H Plapp, a sole proprietorship. d/b/a Highland Park Dairy, Harry Summe and Harriet Summe, a partnership, d/b/a Summe Bros; John Trenkamp, Joseph J. Trenkamp, and Lawrence H Trenkamp, a partnership d/b/a John Trenkamp Dairy; Herman H Hanneken, a sole proprietorship, d/b/a The Henneken Dairy Company, Wehr Dairy, Inc., Anna Krechtling, a sole proprietorship, d/b/a Bosse Dairy. Emma H Myers, a sole proprietorship, d/b/a L Myers Dairy; Cedar Hill Farms, Inc., H Woebkenbeig Dairy Co., Inc.; Andrew L Wolfzorn, a sole proprietorship, d/b/a A. L. Wolfzorn Dairy, The Woodmont Dairy Company, The J T Ruther & Sons Co.; Summe & Ratermann Co., Inc., Albert J Ziegler and Pete J. Young, a partnership, d/b/a Jersey Farm Dairy. Gillespie Milk Products Corporation, O H Boerger and B. P. Boerger, a partnership, d/b/a Boerger Dairy Farms: The French-Bauer Company, a Division of the Cooperative Pule Milk Association, The Hiland Dairy Company; The Matthews-Frechtling Dairy Company, The Beatrice Foods Company, The Flechtling Dairy Company

² See Avondale Dairy Co, et al, 92 NLRB 89 The parties stipulated to incorporate the record in that case as part of the record in the instant proceeding

As noted in Avondale Dairy, supra, these Employers in various combinations have had joint bargaining relationships with the Petitioner since 1913. In 1949 and in 1950 they created a nine-man committee to represent them in negotiating a new agreement with the Petitioner. Beatrice participated in these joint negotiations, and the record shows that in prior years at various times, it had joined informally in group bargaining with the other Employers. However, during 1950 negotiations representatives of Beatrice stated that this was the last time they would join any group bargaining, and after the conclusions of the negotiations, Beatrice did not enter into any written contract with the Petitioner, although in practice it has followed the terms of this new agreement. Since the close of 1950 group negotiations Beatrice has met with the Petitioner to discuss contract terms for its employees only. At the hearing in this case, representatives of Beatrice stated that they did not intend to engage in multiemployer bargaining in the Cincinnati area in the future.

The Board has held that, despite its earlier participation in group bargaining, if an employer at an appropriate time manifests an equivocal intent to pursue an individual course in his labor relations, a unit limited to his employees alone becomes appropriate. We find that Beatrice has evidenced such an intent at an appropriate time, and that a unit limited to its employees alone is appropriate.

A dispute exists also as to whether certain employees should be included in the unit for the purpose of a Section 9 (e) election. On the entire record, including the record in *Avondale Dairy*, supra, we find the following employees whose job classifications are listed in the contracts which designate the composition of the unit are appropriately in the unit and eligible to vote in the election directed hereinafter:

(a) The four shipping clerks employed by the French-Bauer Company.

The record shows that these employees are engaged in routine duties of receiving orders and assigning deliveries to the special delivery ice cream drivers. They are under the supervision of the plant superintendent, receive the same wage scale as plant employees, and are located in a separate office in the ice cream department of the Employer. The fact that upon certain occasions they may reprimand a driver for being derelict in his duties, or grant time off in emergency situations only, is not sufficient basis for finding, as urged by the Employer, that they are supervisors. Nor do we find any basis for concluding that they are office clericals.

⁴ RKO Radio Pictures, Inc., 90 NLRB No 58 and cases cited therein

⁴Unlike the situation before the Board in Engineering Metal Products Corporation, 92 NLRB 823, Beatrice did not reverse its position after having entered into the jointly negotiated agreement of 1950 Beatrice, as noted above, has never signed that agreement See Economy Shade Company, 91 NLRB 1552

(b) The garage employee, employed by the J. H. Fielman Dairy Company.

We find no merit to the Employer's contention that this employee is not eligible to vote because he is not a member of the Petitioner. The contract specifically includes his classification.

(c) The porter employed by the Avondale Dairy Company.

We find, contrary to the Employer's contention, that his work, which includes cleaning the Employer's trucks and dairy grounds, comes within the job classifications of the contract. The fact that the Employer's private residence adjoins the dairy, and that he also does maintenance work at the Employer's residence while receiving his full salary from the dairy, is not sufficient to remove him from the unit.

However, we shall exclude the following from the voting group:

- (a) The inside production employee employed by the Boerger Dairy Farms, because of his close relationship to the Employer.
- (b) The butter drivers of the Beatrice Foods Company, because they are represented by the Petitioner in a unit covered by an existing contract, different from the unit for which authorization for a union-security contract is herein sought.

Accordingly, we find that the following employees constitute units appropriate for the purposes of union-security authorization elections within the meaning of Section 9 (e) of the Act.

1. All employees of the Employers, listed below, 5 who are covered

 $^{^{6}\,} The \ Coors \ Bros \ Co$, The Hyde Park Dairy Company; Emmert J. Marschman, a sole proprietorship d/b/a Clover Leaf Dairy; G. H. Berling, Inc., Joseph Hollmann and Fred Hollmann, a partnership, d/b/a Hollman Bros Dairy; Harry S. Mandery, a sole proprietorship, d/b/a John C Mandery & Sons, The Kaesemeyer & Sons Co; William Hinnenkamp and Joseph Hinnenkamp, a partnership, d/b/a Hinnenkamp Dairy; Feldman Dairy Company, Inc; Leo Ruther and Alfred Ruther, a partnership d/b/a Meyer & Ruther Dairy; George Rehkamp and Joseph Kahmann, Jr, a partnership, d/b/a Kahmann & Rehkamp Company; Harry Mause, a sole proprietorship, d/b/a H. Mause Dairy; Geo. T. Niehoff, a sole proprietorship, d/b/a Geo T. Niehoff Dairy, The H. Meyer & Sons Dairy Co., Opekasıt, Inc.; The J. Weber Dairy Co.; Louis J. Trauth, Sr., Louis J. Trauth, Jr., and Albert E Trauth, a partnership, d/b/a Louis J. Trauth Dairy; H. Miller Dairy Co, Inc.; Dale Grace, John Grace, Jr, James Grace and Thomas Grace, a partnership, d/b/a Wilson Dairy Products; Joseph Druehe and Caroline Heile, a partnership, d/b/a Avondale Dairy Co; The J H. Fielman Dairy Company; Schmiesing, Inc.; The Niser Ice Cream Company; Dilg Dairy, Inc , The J. H Berling Dairy Products Co.; Herman T. Feldman. a sole proprietorship, d/b/a Newport Dairy; Fred H. Plapp, a sole proprietorship, d/b/a Highland Park Dairy; Harry Summe and Harriet Summe, a partnership, d/b/a Summe Bros., John Trenkamp, Joseph J Trenkamp, and Lawrence H Trenkamp, a partnership, d/b/a John Trenkamp Dairy; Herman H Hanneken, a sole proprietorship, d/b/a The Hanneken Dairy Company; Wehr Dairy, Inc , Anna Krechtling, a sole proprietorship, d/b/a Bosse Dairy; Emma H. Myers, a sole proprietorship, d/b/a L Myers Dairy; Cedar Hill Farms, Inc., H. Woebkenberg Darry Co, Inc.; Andrew L Wolfzorn, a sole proprietorship, d/b/a A. L Wolfzorn Darry; The Woodmont Dairy Company, The J. T. Ruther & Sons Co.; Summe & Ratermann Co, Inc; Albert J Ziegler and Pete J. Young, a partnership, d/b/a Jersey Farm Dairy; Gillespie Milk Products Corporation; O. H. Boerger and B. P. Boerger, a partnership, d/b/a Boerger Dairy Farms; The French-Bauer Company, a Division of the Cooperative Pure Milk Association; The Hiland Dairy Company; The Matthews-Frechtling Dairy Company; The Frechtling Dairy Company.

in the latest collective bargaining agreements negotiated with the Petitioner, including the employees discussed above, excluding all office clerical employees, all retail store employees, all employees presently covered by collective bargaining agreements with other labor organizations, and all guards, professional employees, and supervisors as defined in the Act.

2. All ice cream driver salesmen and truck drivers, all plant personnel, plant porters, checkers, shipping clerks, maintenance men, and garage employees, employed by Beatrice Foods Company, excluding all butter drivers, office clerical employees, all retail store employees, all guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication in this volume.]

LIGGETT & MYERS TOBACCO COMPANY and TOBACCO WORKERS INTERNATIONAL UNION A. F. OF L., LOCAL No. 176, PETITIONER. Case No. 34-RC-194. April 26, 1951

Amended Decision, Order, and Direction of Election

On October 20, 1950, the Board issued a Decision and Order in which, among other things, it dismissed the petition in the instant case on the ground that the air-conditioning employees in the unit sought by the Petitioner did not constitute an appropriate unit. On March 5, 1951, the Petitioner sought reconsideration of this dismissal, urging that, even though the air-conditioning employees are not considered at this time to constitute a separate appropriate unit, they be given an opportunity to indicate whether or not they wish to be included in the production unit currently represented by the Petitioner.

On March 26, 1951, the Board issued a notice to show cause why an election should not be directed in a voting group composed of the air-conditioning employees, to determine whether they desire to be represented by the Petitioner, by the Intervenor, International Association of Machinists, Lodge No. 721,² or by neither. Thereafter, the Petitioner filed an answer to the notice to show cause stating that it desired that such an election be held and that its name be placed on the ballot. The Intervenor also filed an answer stating

⁶ Except for the inside production employee of Boerger Dairy Farms.

¹91 NLRB 1145. The present proceeding was at that time consolidated with *Liggett & Myers Tobacco Company*, Case No. 34-RC-183.

²The Intervenor is the current contractual representative of a group of mechanical maintenance employees.

⁹⁴ NLRB No. 22.